

SEP 12 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUAN MANUEL DIAZ-AGUILAR,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 07-72063

Agency No. A77-332-437

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted September 8, 2008<sup>\*\*</sup>

Before: TASHIMA, SILVERMAN, and N.R. SMITH, Circuit Judges.

Juan Manuel Diaz-Aguilar, a native and citizen of Mexico, petitions for review of the decision of the Board of Immigration Appeals denying his motion to

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

reopen the underlying denial of his application for cancellation of removal based on his failure to establish exceptional and extremely unusual hardship to his United States citizen children.

In his motion to reopen, petitioner asserted exceptional and extremely unusual hardship based on the new evidence that his children are suffering from obesity and related conditions. We conclude that the BIA considered the new evidence, and acted within its broad discretion in determining that the evidence was insufficient to warrant reopening. *See Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2000) (the BIA's denial of a motion to reopen shall be reversed only if it is "arbitrary, irrational, or contrary to law").

**PETITION FOR REVIEW DENIED.**